IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.821 OF 2004

PETITIONER : Mahaveer, S/o Late Shri Balaram, Aged about 53 years, R/o Brahminpara, Durg, Tehsil & District: Durg, Chhattisgarh.

P.R. No. 883/04 Shivtaj Singh 15-03-04

- VERSUS -

RESPONDENTS :

1. State of Chhattisgarh, Through : Principal Secretary, Government of Chhattisgarh, , D.K.S. Building, Mantralaya, Raipur (C.G.).
2. The Collector Cum Land Acquisition Officer, Durg, District Durg (C.G.).
3. The Commissioner, Municipal Corporation, Durg, Dist. Durg (C.G)

RECEIVED COPY 15/3/04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

The petitioner, above-named most respectfully submits as under: -

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 821/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	11-2-2005 Smt. Renu Kochar, counsel for the petitioner. Shri Praveen Das, P.L. for the State/respondents No.1 and 2. Shri Sanjay K. Agrawal, counsel for respondent No.3. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India with a prayer to command the respondents to release the land of the petitioner from the acquisition proceedings. Brief facts leading to filing of this writ petition are that the petitioner's father was owner of the agricultural land situated along with the bank of river Shivnath and in respect of which land acquisition case No.7A/82, year 89-90, was registered by the Land Acquisition Officer, Durg. On 16th June, 1989 notification under Section 4 of the Land Acquisition Act was issued and thereafter, notification under Section 6 of the Land Acquisition Act was issued on 22-12-1989. On 15-1-90, the father of the petitioner appeared before the Land Acquisition Officer and filed the claim. Subsequently, on 21-1-1991, the Land Acquisition Officer passed an award of Rs.2,59,512/- and amount of award was ordered to be deposited and that amount was not deposited till 10-2-95 on which date the only amount was could be deposited. Even though in the Revenue Record the land is said to have been vested in the Government, but as on date the petitioner still	

GR. PRJ—FS/350—12/2000—50,000.

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मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

continues with the physical possession of the land, the land was originally acquired for water project, but the petitioner's land is in excess from the requirement of the respondents and the said land is still lying vacant even after the completion of the project. Thereafter, the petitioner learnt that the Municipal Corporation is establishing a garden on the land, which the petitioner came to know through newspaper, which was not for the original purpose and compensation was awarded.

Return has been filed on behalf of respondent No.3 in which it has been mentioned that the land has been finally vested in the respondents for water supply project, compensation has already been awarded and same was deposited on 10-2-95. The father of the petitioner did not challenge the acquisition proceeding and allowed the same to become final, and possession has already been handed over to the Municipal Corporation, Durg, as the land vested finally with the respondents as per Section 16 of the Land Acquisition Act and the writ petition is not maintainable. It is denied that the petitioner is in physical possession of the acquired land. Total area 5.17 acre of land was acquired including the petitioner's father land and pump house, distribution point and small electric power house were constructed on the part of acquired land and in the remaining part of land garden for general public (adjacent to water supply system) has been developed by

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Municipal Corporation, Durg. It is also for the public purpose. It is incorrect to say that the land acquired was in excess of requirement of the corporation.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submits that the land in question was not utilized for the purpose for which it was acquired, therefore, it should have been released in favour of the petitioner.

On the other hand, learned counsel for respondent No.3 submits that it is incorrect to say that the land in question has not been utilized for the purpose it was acquired. Since total land of 5.17 acres was acquired and on the part of which pump house, distribution point, and small electric powerhouse were constructed and the remaining land has been utilized for the public park which is also part of the water scheme. It cannot be said that it has not been utilized. Therefore, the point raised by learned counsel for the petitioner is devoid of any merit. Even otherwise, the point raised by learned counsel for the petitioner is squarely covered by the decisions of Hon'ble Apex Court in the cases of **Gulam Mustafa and others V. The State of Maharashtra and others** reported in **AIR 1977 SC 448** and **Govt. of A.P. and another V. Syed Akbar** reported in **JT 2004 (10) SC 569**. In the matter of **Gulam Mustafa** (Supra) the Hon'ble Apex Court held that:

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

"There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 5 (3) declaration."

Learned counsel for the petitioner further submits that the compensation amount awarded to the petitioner is too low.

If the petitioner or his father was dissatisfied with the amount of compensation, then he ought to have moved appropriate Forum at the appropriate time for enhancement of the compensation as per Section 18 of the Land Acquisition Act, 1894. Section 18 envisages that 'any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, where his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.' Therefore, in view of this provision, the arguments advanced by learned counsel for the petitioner is not tenable.

Another point raised by learned counsel for the petitioner is that the petitioner was in possession of the land till 2002 and he was depositing the land revenue, but in view of the provisions of Section 16, argument of learned counsel for the petitioner is devoid of any merit,

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मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	as Section 16 of the Land Acquisition Act, 1894, envisages that 'when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon (vest absolutely in the {Government}), free from all encumbrances.' Therefore, the land after award vested in the Government and moreover, respondents have specifically denied in the return that it is incorrect to say that the petitioner was in possession of the land in question. In view of the above, I do not find any substance in this writ petition, same is liable to be dismissed and it is accordingly dismissed. Consequently, M.(W.)P. No.744/2004 and I.A. No.678/2005 stand disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	

Barve

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